IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WA.No. 2464 of 2007

(AGAINST THE JUDGEMENT IN WPC.20058/2007 Dated 29/06/2007)

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APPELLANT/PETITIONER

R.JAYASANKAR
MANAGING DIRECTOR
CHELUR ENGINEERING INDUSTRIES (P) LTD
M.G.ROAD,
KOCHI-16.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS/RESPONDENTS
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1. CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT,1972
AND THE DISTRICT LABOUR OFFICER,
ERNAKULAM.

2. C.K.BAHULEYAN
CHERIYEDATH HOUSE
JANATHA ROAD,
KOCHI-19.

BY GOVERNMENT PLEADER SHRI M.P. SREEKRISHNAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2464 OF 2007

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Dated this the 26th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The Managing Director of Chelur Engineering Industries (P) Limited is before us in this Appeal, being aggrieved by the orders passed by the learned single Judge in W.P.(C) No. 20058 of 2007 dated 29.06.2007.

2. In the Writ Petition filed, the petitioner had called in question the correctness or otherwise of the orders passed by the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 and also the order passed in the Review Petition. The Controlling Authority, before framing/issuing the impugned order dated 4th October, 2005 had issued notice to the petitioner and in fact that notice had been served on the petitioner. The petitioner had filed his objections. But half way through the proceedings, for the reasons best known to him, he did not participate in the proceedings before the Controlling Authority.

3. The Controlling Authority, taking into consideration the available materials with her and also the report of the inspecting wing of the Department has proceeded to pass the impugned order dated 4th October, 2005 .

4. After receipt of the copy of the order and the show cause notice issued, directing the petitioner to implement the orders passed by the

Controlling Authority, the petitioner had filed an application under Rule 11(5) of the Kerala Payment of Gratuity Rules before the Controlling Authority . The Controlling Authority, after considering the Review Petition so filed, is of the opinion that the petitioner has not made out specific grounds to review the impugned order dated 4th October, 2005. Aggrieved by the aforesaid two orders, the appellant/petitioner was before this Court in W.P.(C) No. 20058 of 2007. The learned single Judge has rejected the Writ Petition by order dated 29.06.2007. That is how, the appellant/petitioner is before us in this Appeal.

5. In our opinion, first and foremost, the appellant/petitioner could not have questioned the correctness or otherwise of the orders passed by the Controlling Authority in exercise of his powers under Section 7(5) of the Payment of Gratuity Act in a Writ Petition. If for any reason, the appellant/petitioner is aggrieved by the orders passed by the Controlling Authority, he should have questioned the same before the first appellate authority as provided under Rule 18 of the Kerala Payment of Gratuity Rules. On that short ground itself, the learned single Judge could have rejected the Writ Petition. Since the appellant/petitioner has an effective, efficacious and alternate remedy by way of an appeal against the order passed by the Controlling Authority, in our opinion, the appeal filed by the appellant/petitioner cannot be entertained by us. In that view of the matter, we pass the following:

O R D E R

i) The Writ Appeal is disposed of.

ii) If the appellant/petitioner so desires, he can file an appropriate appeal before the first appellate authority as provided under Rule 18 of the Kerala Payment of Gratuity Rules. If and when such an appeal is filed, the appellate authority may consider the appeal in accordance with law.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/dk